SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 45

COMMONWEALTH OF PENNSYLVANIA, EX REL. STEPHEN J. HERMAN, PETITIONER,

vs.

DR. JOHN W. CLAUDY, WARDEN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA, WESTERN DISTRICT

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1 In the Court of Common Pleas of Washington County Pennsylvania

PETITION FOR WRIT OF HABEAS-CORPUS

To the Honorable, the Judges of said Court:

The Petition of Stephen J. Herman respectfully represents:

1. That he is unjustly confined and detained by the Warden of Western States Penitentiary by reason of commitments of the Court of Quarter Sessions of Washington County, Pennsylvania at Nos. 56 to 63, both inclusive, November Sessions, 1945.

2. That the sentences in the above mentioned cases were imposed by the said court on October 26, 1945, by His Honor Carl E. Gibson, Presiding Judge, and are as follows:

No. 56 November Sessions, 1945—Burglary and Larceny 2½—5 years—Concurrent with sentence at No. 57 November Sessions, 1945.

No. 57 November Sessions, 1945—Burglary and Larceny 1st count—2½—5 years—To take effect at expiration of sentence at No. 62 November Sessions, 1945.

2nd count—2½—5 years—To take effect at expiration of sentence on first count of this number.

2 3rd count—2½—5 years—Concurrent with second count at this number.

No. 58 November Sessions, 1945—Forgery and False Pretense:

1st count—2½—5 years—Concurrent with sentence at No. 57 November Sessions, 1945.

2nd count—2½ years—Concurrent with sentence at No. 57 November Sessions, 1945.

No. 59 November Sessions, 1945—Forgery.

7 counts—2½—5 years—to run concurrently at the expiration of sentence at No. 57 November Sessions, 1945.

No. 60 November Sessions, 1945—Burglary and Larceny.

1st count—2½—5 years—Concurrent with sentence at No. 57 November Sessions, 1945.

2nd count—2½—5 years—Concurrent with sentence at No. 57 November Sessions, 1945.

No. 61 November Sessions, 1945—Larceny.

1st count—2½—5 years. To take effect as of September 5, 1945.

2nd count—2½—5 years—To take effect at expiration of sentence on 1st count of this indictment.

3rd count—2½—5 years. To take effect at expiration of sentence on 2nd count of this indictment.

3 No. 62 November Sessions, 1945—Burglary and Larceny—2½—5 years—To take effect at expiration of sentence at No. 61 November Sessions, 1945.

No. 63 November Sessions, 1945—Burglary and Larceny. 1st count—2½—5 years—Concurrent with sentence at No. 57 November Sessions, 1945.

2nd count—2½—5 years—Concurrent with sentence at No. 57 November Sessions, 1945.

The said sentences impose upon Defendant a total imprisonment of a minimum of 17½ years, expiring March 8, 1963, and a maximum of 35 years, expiring September 8, 1980.

3. That Relator is unjustly confined and imprisoned as a result of having been deprived of his constitutional rights in the proceedings prior to commitment and that said detention is in violation of due process of law.

4. That said deprivation of due process of law resulted, inter alia, from the fact that relator was not represented by counsel in the proceedings by virtue of which he is presently detained.

5. That under the circumstances of the case, Relator's representation by counsel was a necessary ingredient of due process, such circumstances being as follows:

(a) At the time of sentence, Relator was 21 years of age and of limited educational background, having com-
4 pleted only six years of elementary school.

(b) At no time during the period between arrest and sentence did Relator receive the advice, support and assistance of relatives or friends.

(c) Relator's previous experience in criminal court had been confined to the entering of pleas of guilty in 1943 to charges of Burglary, Larceny and Forgery, for which offenses he received a sentence of 6-12 months in the County Jail. Despite this previous experience, Relator had no knowledge of formal criminal proceedings, since the way in which the 1943 plea and sentence was handled was substantially the same as the instant cases.

(d) Relator did not know that he had a right to be represented by court-appointed counsel and was never so advised by the court, the prosecuting attorney, or any other court official.

(e) Relator was not asked to waive, and did not in fact, waive the appointment of counsel.

(f) The charges against Relator, though contained in eight indictments, in fact involved 27 separate offenses, under which

the maximum possible sentences would total 115 years in the penitentiary.

(g) Relator at no time knew nor was he advised of the severity of the sentences which might be imposed under the within indictments.

6. That the pleas of guilty in the above mentioned cases are invalid by reason of the failure to provide Relator with counsel, since the lack of representation actively operated to produce an ingredient of unfairness in the process which resulted in Relator's confinement.

7. That the want of counsel operated specifically to the prejudice of Relator in that competent counsel would have been able to take advantage of the following defects in the procedure prior to and at the time of sentence:

(a) The entry of plea and waiver of submission to the Grand Jury signed by Relator on September 8, 1945, authorized the preparation of three District Attorney's Bills of Indictments only—i.e., for burglary, forgery and larceny of an automobile.

(b) The indictments at Nos. 56, 57, 59, 60, 61 and 63 November Sessions, 1945, were all objectionable prior to trial on the ground of misjoinder, since in each of these indictments Defendant was charged with several separate and distinct felonies, committed at different times and involving separate circumstances.

(c) The indictment at No. 58 November Sessions, 1945, charges Defendant in the first count with forging and uttering a check, to the prejudice of one Jacob Wilner. The second count, charging Defendant with False Pretense, arises out of the same facts, yet separate sentences were imposed on each count. Moreover, the evidence of the Commonwealth, as set forth in the plea notes, would sustain only an attempt to obtain money by false pretense.

(d) Several of the offenses charged were cognizable exclusively in the Court of Over & Terminer, yet it appears from the record of the plea that all cases were disposed of in the Court of Quarter Sessions.

(e) The indictment at No. 59 November Sessions, 1945, involved seven separate and distinct charges of forgery, all of them arising out of Defendant's having signed his wife's name to certain checks written on her bank account. No layman is competent to determine whether the signing of the wife's name amounted to the offense of forgery, since in addition to the fact of signing such factors are involved as whether the rights of others were prejudiced, the necessary intent to defraud existed, the funds in the bank account were the sole

and separate property of the wife, and the authority of Defendant to act as agent for his wife. Failure to raise any of these points resulted in sentences of 2½ to 5 years on each separate count, although in fact the bank honored all of the checks and no loss was sustained by any third person.

(f) The presence of counsel would have prevented the situation which arose on October 26, 1945, when Relator was brought before the court for sentence. At this time, the Assistant District Attorney, Frank J. Doektor demanded that Defendant sign pleas to all eight indictments and when Defendant asked what he was signing the reply was "Sign your name and forget it." Relator avers that it was not until January of 1946 that he learned specifically what offenses he had pleaded guilty to, as a result of an inquiry directed to His Honor Judge Gibson.

8. That Relator was further deprived of his constitutional rights in the following respects:

(a) Following his arrest, Relator was held incommunicado for 72 hours, part of the time in the Women's Quarters in the County Jail.

(b) Relator was questioned off and on over this 72-hour period by the State Police and during the questioning the safety of his wife and daughter were threatened.

(c) At one stage in the questioning, Relator was assaulted by State Trooper H. M. Jaynes, who grabbed him by the neck and threatened to choke him if he did not confess.

(d) The so-called "confession" which afforded the basis for the preparation of District Attorney's bills was obtained as a result of threats and violence and was, in fact, untrue as to most of the charges.

(e) When Relator was brought before the Justice of the Peace he inquired as to the charges against him but he was not given this information.

9. That on the basis of the violations of his constitutional rights as set forth herein, Relator is entitled to the issuance of a writ of habeas corpus and further is entitled to be discharged from custody.

10. That Relator is guilty only of the offense charged in the first count at No. 58 November Sessions, 1945 and is not guilty of any other offenses charged against him.

11. That Relator requests permission to be present in court for a hearing and to produce witnesses on his own behalf, for the purpose of proving the following:

(a) That he was, in fact, ignorant of his rights in respect to the appointment of counsel to represent him; that he did not waive the same and that he was, in fact, prejudiced thereby.

(b) That he was not informed of the nature and severity of the crimes with which he was charged.

(c) The factual matters set forth in Paragraph 8 hereof.

(d) Any other matters of fact relevant to this Petition.

12. That the only previous application for a writ of habeas corpus was that made to this Honorable Court in May of 1952, which Petition was not accepted by this court by reason of the fact that it was submitted in forma pauperis and no filing fee was paid.

9 Wherefore, the Petitioner prays that a writ of habeas corpus be granted and awarded for his relief, under the seal of the said Court of Quarter Sessions of Washington County, Pennsylvania, directed to the said John W. Claudy, commanding him to have the body of the Petitioner before this Honorable Court immediately, to do, submit and receive whatsoever this court may consider right in that behalf, and likewise to certify specifically and fully the true causes of his commitment and detainer and when he was committed.

And he will ever pray.

STEPHEN J. HERMAN.

(Affidavit of Stephen J. Herman)

10 IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

ANSWER OF THE DISTRICT ATTORNEY OF WASHINGTON COUNTY, PENNSYLVANIA, TO PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable Carl E. Gibson, Judge of the Court of Common Pleas of Washington County, Pennsylvania.

And now, comes Wray G. Zelt, District Attorney of Washington County, Pennsylvania, and makes answer to the petition for writ of habeas corpus filed, and states as follows:

1. In answer to the allegations of paragraph one it is denied that the petitioner is unjustly confined and detained by the Warden of Western State Penitentiary by reasons of commitment of the Court of Quarter Sessions of Washington County, Pennsylvania at Nos. 56 to 63 inclusive, November Sessions, 1945. On the contrary it is stated that the petitioner is lawfully confined in accordance with

sentences that are legal and in accordance with the laws of the Commonwealth of Pennsylvania.

2. The allegations in paragraph two are admitted.

3. In answer to the allegations of this paragraph, the District Attorney avers that said commitment and detention was not in violation of his constitutional rights and that due process of law was given to this petitioner.

4. In answer to the allegation that due process of law was deprived this petitioner because he had no counsel, the District Attorney avers that no request was made by said petitioner to the Court to have counsel appointed for him, therefore there is no violation of due process of law.

5. In answer to the allegations of paragraph five:

a. It is immaterial that the petitioner was 21 years old and of limited educational background. No violation of due process of law was violated.

b. It is not a necessary ingredient of due process of law that a defendant should receive the advice, support and assistance of relatives or friends. There is nothing in the record to indicate that this opportunity was denied to this petitioner.

c. The petitioner having been in Court before and having some experience with criminal procedure cannot now allege that his lack of criminal experience is a violation of due process of law.

d. There is no requirement of law that a defendant has a right to have the Court appoint counsel for him. There is also no constitutional right that a defendant be informed by the Court or prosecuting attorney that he has a right to have counsel appointed for him.

e. There is no requirement in law that the defendant be asked if he desires to waive his right to have counsel or have the Court appoint one for him.

f. The facts in this paragraph are admitted.

g. There is no rule which requires the Court or the District Attorney to advise the defendant of the severity of the sentences which may be imposed by the Court. This petitioner having been in trouble before, knew or had some knowledge of the severity of the crimes charged against him.

6. The allegations in this paragraph are denied. Nowhere in his petition does the petitioner allege unfairness of the Court.

7. It is denied that the failure of petitioner to have counsel operated to the detriment of the rights of this petitioner:

a. The petitioner having entered his plea of guilty and having waived the submission of the indictment to the Grand Jury,

under the Act of 1907, P. L. 62, cannot now object to any defects of procedure.

b. Having entered his plea of guilty and waiving the submission of the indictment to a Grand Jury, the defects if any are cured and objections cannot be raised at this time.

c. Having entered his plea of guilty and waiving the submission of the indictment to a Grand Jury, the defects if
13 any are cured and objections cannot be raised at this time.

d. The petitioner having entered his plea of guilty and having waived the submission of the indictment to the Grand Jury cannot now state that the Commonwealth did not have sufficient evidence to prove the crime charged.

e. The matters raised are questions of fact which cannot be considered after plea and sentence. If the petitioner was of the opinion that he did not sign the name of his wife, he should not plead as he did. Nowhere does the defendant deny that he signed his wife's signature to the check.

f. It is denied that the statements were made by the Assistant District Attorney in order to obtain pleas to the charges involved. This does not appear in the record.

8. a. It is denied that the relator's constitutional rights were denied because he was arrested and confined for a period of seventy-two hours. This is not an unreasonable length of time to hold a defendant. It was necessary for the police officers to make a complete investigation in view of the fact that so many crimes were committed by the relator.

b. It is denied that the officers threatened the safety of the wife and daughter of this relator. The District Attorney's Office has questioned the officers involved and have ex-
14 amined the records of the State Police and state that the charges are untrue and is amazed that counsel for relator has injected this in the petition.

c. It is denied that officer H. M. Jaynes assaulted this relator. It is alleged that if this statement were true, petitioner should have notified the Court of this fact at the time of sentence. Failure to do so convinces the District Attorney that this statement is false.

d. It is denied that a confession was obtained as a result of threats and violence. On the contrary it is alleged by the District Attorney that the confession was voluntarily obtained and failure of defendant to notify the Court of the fact at the time sentence was imposed clearly indicates that this charge is false and untrue.

e. The allegation that the Justice of the Peace failed to inform this defendant of the charges is denied. The defendant

failed to advise the Court at the time he was sentenced of, this fact clearly indicates that this statement is false and untrue.

9. It is again denied that the constitutional rights of the relator were violated. On the contrary, the relator's rights were protected by the Court and the District Attorney; therefore there is no basis for being entitled to be discharged from custody.

10. The allegations that the defendant is only guilty of the charge at No. 58 November Sessions, 1945 is denied. The defendant having an opportunity to inquire into the charges at the time of sentences, did so, and never at that time denied the commission of the other charges.

11. The District Attorney states that it would be a waste of time and very expensive for Washington County to have this defendant go into a hearing to prove charges that he could have raised at the time he was sentenced by this Court.

The District Attorney wishes to state that the question of laches arises even in an application for a Writ of Habeas Corpus and may require a refusal to issue the writ.

The Writ of Habeas Corpus should be dismissed for the reasons above assigned.

Respectfully submitted,

JOHN F. RONEY,
Assistant District Attorney.

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

ANSWER OF ACTING WARDEN TO PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable, the Judges of said Court:

And now comes James F. Maroney, Acting Warden of the Western State Penitentiary, successor to Doctor John W. Claudy, Warden, respondent above named, and admits that Stephen J. Herman is being confined and restrained of his liberty in the Western State Penitentiary, but in answer hereto states as follows:

First: That the said Stephen J. Herman was received at the Western State Penitentiary on November 9, 1945 under sentences imposed on October 26, 1945 by Honorable Carl E. Gibson in the Court of Quarter Sessions of Washington County as follows:

A. No. 61 November Term, 1945: 1st Count—Larceny—2½ to 5 yrs. 2nd Count—Larceny—2½ to 5 yrs. 3rd Count—Larceny—2½ to 5 yrs., to be served consecutively.

No. 62 November Term 1945: Burglary and Larceny—2½ to 5 yrs. To begin at the expiration of sentence imposed on 3rd Count, No. 61 November Term 1945.

No. 57 November Term 1945. 1st Count—Burglary and Larceny—2½ to 5 yrs. 2nd Count—Burglary and
17 Larceny—2½ to 5 yrs., to be served consecutively with sentence imposed at No. 62 November Term 1945.

No. 57 November Term 1945: 3rd Count—Burglary and Larceny—2½ to 5 yrs., to be served concurrently with sentence imposed at No. 57 November Term 1945—2nd Count.

No. 59 November Term 1945—Forgery (7 counts)—7 concurrent sentences of 2½ to 5 yrs., each to be served consecutively with sentence imposed at No. 57 November Term 1945.

No. 60 November Term 1945—Burglary and Larceny and Burglary—1st Count 2½ yrs. to 5 yrs; No. 60 November Term 1945—Burglary and Larceny and Burglary—2nd Count 2½ to 5 yrs.

No. 63 November Term 1945—Burglary and Larceny—1st Count 2½ to 5 yrs., No. 63 November Term 1945—Burglary and Larceny—2nd Count 2½ to 5 yrs., to be served concurrently with sentences imposed at No. 57 November Term 1945.

No. 58 November Term 1945—Forgery, False Pretense—1st Count 2½ to 5 yrs., No. 58 November Term 1945—Forgery, False Pretense—2nd Count 2½ to 5 yrs., to be served concurrently with sentence imposed at No. 57 November Term 1945.

Second: In accordance with the provisions of an Act of Assembly
18 approved June 25, 1937, P. L. 2093, the sentences were computed and entered on the records of the Western State Penitentiary as not less than 17½ years nor more than 35 years, the minimum of which will expire on March 8, 1963, and the maximum on September 8, 1980.

So answers.

JAMES F. MAHONEY,
Acting Warden.

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY
PENNSYLVANIA

PLEA OF DEFENDANT AND SENTENCE OF THE COURT

Plea of Defendant before the Honorable Carl E. Gibson, P. J. Friday, October 26, 1945, at 11:10 o'clock, a.m.

Appearances:

F. J. Docktor Esq., Assistant District Attorney, represents the Commonwealth.

No appearance for the defendant.

The defendant, Stephen J. Herman, stands at bar.

By Mr. Docktor:

If it please Your Honor, Stephen J. Herman, of Washington, is entering his plea of guilty to various indictments and counts drawn from No. 56 November Term to No. 63 November Term; inclusive, for the following offences. I will try to take them in chronological order.

At No. 61 November Term, 1945, this defendant is charged with larceny involving three counts; the first, of an automobile—1939 Ford truck belonging to the Union Transfer Company of Waynesburg, where he stole, unlawfully took it at West Brownsville, in Washington County, the value of said automobile being $950.00. That took place on May 26th of this year. The second count in the same indictment at No. 61 November Term charges him with larceny at West Brownsville, on August 5th of this year, of the 1941 Chevrolet Convertible automobile, bearing West Virginia registration plates, the property of Charles F. Sealay, of 613 Glove Avenue, Morgantown, West Virginia. This automobile was taken at West Brownsville, Washington County. The third count in the same indictment at No. 61 November Term charges this defendant with stealing another automobile Sunday, March 21st of this year, being a 1940 two-door Sedan, the property of Gibson Longden of Dunns Station, the value of $1,000.00.

At No. 62 November Term, 1945, Stephen J. Herman is entering his plea of guilty to a charge of burglary and larceny. This involves the breaking and entering into, on March 21st of 1945, the Saint Patrick's Church, 216 Greenside Avenue, in Canonsburg, where he gained entrance through a rear window and broke into two poor boxes, and from the one he stole approximately $20.00 in cash, and approximately $8.00 in cash from the other box. He made his getaway, after he completed this burglary and larceny, in a car

that was stolen in Canonsburg. That was the one that I referred to in the other indictment—the first one.

At No. 57 November Term, 1945, the indictment charges this defendant with burglary and larceny. It is a three-count indictment. The defendant is pleading guilty to all counts. The first involves the offense on May 26, 1945, when—that is wrong. The first involves the offense on May 3rd.

By the COURT:

What number are you on?

By Mr. DOCKTOR:

No. 57—on May 3, 1945, when he entered Carmel's Beer Place 330 West Chestnut Street, Washington, by a rear window. He broke into a music box and pin-ball machine, and stole approximately $20.00 in cash. The second count at No. 57 November Term charges that this defendant, on April 15, 1945, entered the same place, Carmel's Beer Place, 330 West Chestnut Street, Washington. He gained entrance through a rear window and broke into a pin ball machine and music box and cash register, and stole $98.18 and some chewing gum. In the third count at No. 57 November Term, on May 10, 1945, he gained entrance into Carmel's Beer Parlor, 330 West Chestnut Street, broke into a pin ball machine, music box, and got approximately $20.00 in cash. On this trip the owner heard him inside. He was upstairs in the apartment. He opened the front door and observed the accused inside, and then this defendant ran out the rear door, and was chased for a distance of several blocks. He was identified by the owner at the time of this defendant's arrest.

At No. 60 November Term, 1945, there is a two-count indictment against this defendant, charging him with burglary and larceny. The first count charges that on May 3, 1945, he entered the Washington Theater on Main Street, in Washington.

By the COURT:

Where?

By Mr. DOCKTOR:

Washington Theater, Main Street, in Washington, by forcing the side door, and then breaking into a candy machine and stealing approximately 15c in money, and forced the

office door and stole an empty money bag and some money wrappers. The second count in the indictment at No. 60 November Term charges that on May 10, 1945, he entered the Washington Theater on Main Street, Washington, by forcing the side door. He broke into the candy machine and forced the door—the office door, but did not get any loot at this time.

At No. 63 November Term, 1945, an indictment charges burglary and larceny—two-count indictment.

By the COURT:

What number is that?

22 By Mr. DOCKTOR:

No. 63, two-count indictment of burglary and larceny. The first count, on May 26, 1945, he entered the Northside Restaurant at Fredericktown. He gained entrance through a rear window and broke into a music box and pin ball machine, and stole approximately $30.00 in money. On this night, he stole the Union Transit Company truck and made his getaway. That is one of the cars involved in the larceny of motor vehicle in the first indictment I gave Your Honor.

In the second count at No. 63 November Term, this defendant, sometime on June 15, 1945, entered the Northside Restaurant again, at Fredericktown, by forcing the rear window and breaking into the music box and pin ball machine, and stole approximately $26.00.

At No. 56 November Term, 1945, there is a two-count indictment charging this defendant with burglary and larceny. In this case, on August 5, 1945, he entered the Penn Confectionery Store and Lunch Room on Railroad Street, West Brownsville, where he gained entrance by spreading the bars on the rear window, and he received $1.50 from the cash register and some chewing gum and packages of cigarettes. He stole the West Virginia car this night to make his getaway. From this car he stole five checks already made out but not indorsed, which checks were involved in a forgery indictment of this defendant, which I will bring up later, to which he is pleading guilty.

23 At No. 58 November Term, 1945, the indictment charges this defendant with a two-count indictment—with forgery and false pretense. The first count accuses the defendant, on August 25, 1945, of forging the name of Benjamin Hoover on a check purported to be drawn by Riverside Electric Company, Duncan Avenue, Morgantown. This check was drawn on the Farmers and Merchants Bank, Morgantown, West Virginia, and was one of the five that was stolen

from the West Virginia car. Payment was stopped on this check by the owner. It is in the amount of $28.28.

The second count charges this defendant with false pretense, involving the same set of circumstances. He tried to defraud one Wilner, with whom he attempted to cash the check.

At No. 59, November Term, this defendant is entering his plea of guilty to seven counts of forgery, drawn up as separate indictments. The first, on May 26, 1945, this defendant cashed a check in the sum of $75.00, made out and endorsed by Stephen J. Herman, and cashed at the Citizens National Bank. In this case, he had forged his wife's name to the check, and it was drawn by Gladys Herman. On June 11, '45 a check in the sum of $85.00—it was made out in his wife's name. He forged his wife's name as the drawer, and also forged her name, and cashed it at the Citizens National Bank. On June 3, 1945, the check in the sum of $15.00—the same thing. He forged his wife's name and cashed it at the R. E. 24 Krause Drugstore at Washington. On June 25, 1945, a check in the sum of $12.00—he also forged his wife's name and cashed this check at the Krause Drugstore on June 30, 1945; a check in the sum of $45.00, to which he forged his wife's name and cashed it at the Krause Drugstore; and July 20, 1945, a check in the sum of $50.10, to which he had forged his wife's name and cashed at the Citizens National Bank; and August 1st, a check in the sum of $40.00, to which he forged his wife's name and cashed the same at the Krause Drugstore.

Now, this defendant, Your Honor, was before this Court in 1943 on a charge of burglary and larceny and forgery. He appeared before Your Honor on September 11, 1943, and entered his plea of guilty to these charges. He was sentenced to pay the costs, a fine of $1.00, and committed to the County Jail for a period of six to twelve months. A similar sentence was passed on the forgery count, to run concurrently with the sentence of burglary and larceny.

This defendant originally comes from West Brownsville. He was married in 1943 and came to live in Washington. He is—(Addressing the defendant) How old are you now?

By the DEFENDANT:

Twenty-one.

By Mr. DOCKTOR:

Twenty-one years of age. Is there anything you wish to state to the Court about your case?

25 By the DEFENDANT:

I throw myself——

By the COURT:

You will have to speak louder.

By the DEFENDANT:

I throw myself at the mercy of the court, Your Honor.

By Mr. DOCKTOR:

I wish to state for the record that the informations and prosecutions were made by H. M. Jaynes of the Pennsylvania State Police.

By the COURT (addressing Defendant):

Where have you worked since you were paroled?

By the DEFENDANT:

I worked at the Hazel.

By the COURT (addressing Defendant):

Have you been working all of the time since you were paroled in 1943?

By the DEFENDANT:

No, sir.

By the COURT:

1944 I believe it was, wasn't it?

By the DEFENDANT:

No, sir; I was working at the hospital, too.

By the COURT:

Sir?

By the DEFENDANT:

I was working at the hospital and Hazel.

By the COURT:

At the hospital?

By the DEFENDANT:

Yes.

26 By the COURT:

How did you come to be working at the hospital?

By the DEFENDANT:

I worked there. I was paroled for that.

By the COURT:

You are the fellow who ran away from there while you were on parole.

By the DEFENDANT:

That is right; yes, sir.

By the COURT:

Will you explain to me why the Court should extend any leniency to you?

By the DEFENDANT:

No, sir.

By the COURT:

We have trusted you twice before and you have never complied with any of the conditions that you were paroled on.

By the DEFENDANT:

I tried to.

By the COURT:

You didn't even try to.

You could have continued to work up there and you wouldn't do that. Where did you go to when you ran away from the job at the hospital?

By the DEFENDANT:

I started to work down at Hazel.

By the COURT:

You were working around this town——

By the DEFENDANT:

Yes, sir.

By the COURT:

—while the officers were searching for you?

27 By the DEFENDANT:

No.

By the COURT:

Where were you?

By the DEFENDANT:

I was here in town but not working.

By the COURT:

You secured your parole on promise of good behavior.

By the DEFENDANT:

Yes, sir.

By the COURT:

In the meantime, you have committed numerous burglaries and forgeries and various felonies?

By the DEFENDANT:

Yes, sir.

By the COURT:

Now you want the Court to have mercy. There is an end to being merciful. We did that in 1944. (Addressing Mr. Docktor) By the way, when was this defendant committed on these charges?

By Mr. DOCKTOR (Addressing Mr. Jaynes):

When did you lock him up? Eighth day of September.

By Mr. JAYNES:

That is right, eighth day of September.

By the COURT:

As to the indictment at No. 61 November Term, 1945, on the first count of the indictment the sentence of the Court is that the

defendant pay the costs of the prosecution, a fine of $1.00, and be imprisoned in the Western Penitentiary for a period of not less than 2½ years, and not exceeding 5 years.

28 As to the second count, the sentence of the Court is that you pay the costs of the prosecution, a fine of $1.00, and be imprisoned in the Western Penitentiary for a period of not less than two and one-half years, and not more than five years, to begin at the expiration of the previous sentence.

As to the third count, the sentence of the Court is that you pay the costs of the prosecution, a fine of $1.00, and be imprisoned in the Western Penitentiary for a period of not less than two and one-half years, and not more than five years, to begin at the expiration of the sentence on the second count.

On the indictment at No. 62 November Sessions of 1945, the sentence of the Court is that you pay the costs of the prosecution, a fine of $1.00, and be imprisoned in the Western Penitentiary for a period of not less than two and one-half years, and not more than five years, to begin with the expiration of the sentence on the third count at No. 61 November Sessions of 1945.

At No. 57 November Sessions, 1945, on the first count of the indictment, the sentence of the Court is that you pay the costs of the prosecution, a fine of $1.00, and be imprisoned in the Western Penitentiary for not less than two and one-half years, and not more than five years, to begin at the expiration of the sentence at No. 62 November Sessions, 1945.

29 On the second count of the indictment, the sentence of the Court is that you pay the costs of the prosecution, a fine of $1.00, and be imprisoned in the Western Penitentiary for a period of not less than two and one-half years, not more than five years, to begin at the expiration of the sentence on count No. 1 in this indictment.

On the third count of the indictment, the sentence of the Court is that you pay the costs of the prosecution, a fine of $1.00, and be imprisoned in the Western Penitentiary for not less than two and one-half years, nor more than five years, to run concurrently with the sentence on the second count.

On each of the counts in the indictment at No. 60 November Sessions of 1945, the sentence of the Court is that you pay the costs of prosecution, a fine of $1.00, and be imprisoned in the Western Penitentiary for not less than two and one-half years, nor more than five years, to run concurrently with the sentence on the indictment at No. 57 November Sessions of 1945.

As to the indictment at No. 63 November Term, 1945, the sentence of the Court on each count in the indictment is that you pay the costs of the prosecution, a fine of $1.00, and be imprisoned in the Western Penitentiary for not less than two and one-half

years, and not more than five years; to run concurrently with the sentence at No. 57 November Sessions of 1945.

30 At the indictment at No. 56 November Sessions of 1945, the sentence of the Court is that you pay the costs of the prosecution, a fine of $1.00, and be imprisoned in the Western Penitentiary for not less than two and one-half years, and not exceeding five years, to run concurrently with the sentence at No. 57 November Sessions, 1945.

As to the indictment at No. 58 November Sessions of, 1945, as to each count in the indictment, the sentence of the Court is that you pay the costs of the prosecution, a fine of $1.00, and be imprisoned in the Western Penitentiary for not less than two and one-half years, nor more than five years, to run concurrently with the sentence at No. 57 November Sessions, 1945.

As to each of the seven indictments at No. 59, November Sessions, 1945, the sentence of the Court is that you pay the costs of the prosecution, a fine of $1.00, and be imprisoned in the Western Penitentiary for not less than two and one-half years, nor exceeding five years, the sentences to run concurrently, and to begin at the expiration of the sentence imposed at No. 57 November Sessions, 1945, and other sentences running concurrently with it.

The view of the Court is, that your total sentence shall be for seventeen and one-half years minimum, and thirty-five years maximum.

31 Stenographer's Certificate to foregoing transcript omitted in printing.

The foregoing record of the proceedings upon the entering of pleas and the passing of sentence upon the defendant in the above causes is hereby approved, and directed to be filed.

CARL E. GIBSON,
Trial Judge.

32 IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

OPINION

GIBSON, *P. J.*

On September 8, 1945, H. M. Jones, a corporal of the state police, made eight criminal informations before John F. Carmichael, an alderman of the City of Washington, against the defendant, charging him with eight offenses of burglary, twelve offenses of larceny, eight offenses of forgery, and two offenses of false pretense, all alleged to have been committed between March 21, 1945, and

August 25, 1945. The record shows that on that day warrants were issued for the defendant, and on the same day he was arrested and brought before the same alderman; that he demanded a hearing on each information and a hearing was held at that time. On each information witnesses were produced and the defendant also was sworn admitting in each case the offense charged in the information, whereupon he was committed.

On October 26, 1945, the defendant was called before the court to enter his plea on the various bills charging the same offenses, and on that day he endorsed on each bill a waiver of submission of the case to the grand jury and entered a plea of guilty in open court. The matter was there presented by the assistant district attorney with the bills endorsed with the waiver and plea, of which a
33 record was taken, and the defendant was given an opportunity to make any statement he desired. It then developed that the defendant, on September 11, 1943, had been before the court on a charge of burglary and larceny and also for forgery, and that at that time he was sentenced on concurrent sentences to be imprisoned in the county jail for a period of not less than six months nor more than twelve months, and that he had been paroled from the county jail to complete his sentences and that he had violated his parole.

On certain of the charges, the defendant was sentenced to the Western Penitentiary to serve an aggregate minimum term of seventeen and one-half years and a maximum of thirty-five years. Sentences on the other charges were to run concurrently with those imposed and added no additional time.

On April 30, 1953, the defendant applied for a writ of habeas corpus, complaining that he was unjustly detained. A rule was issued on this application and an answer was filed by the acting warden of the Western Penitentiary claiming to hold the defendant under the sentences imposed.

The defendant claims:

1. That no counsel was appointed to inform him regarding the charges made in the various indictments and that he should have been supplied with counsel.

2. That counsel should have been supplied because he was not advised of the severity of the sentences which might be imposed.

34 3. That the defendant was not informed of the charges set forth in the indictments.

4. That counsel should have been appointed and he was prejudiced for lack thereof because of the including of different counts in the various indictments, and, therefore, the form of the indictments was improper.

5. That the defendant was detained after his arrest for a period of seventy-two hours during which he was questioned and threatened.

6. That the defendant is guilty only of the offense charged in the first count of the indictment at No. 58 November Sessions, 1945, which charges forgery of a check for $28.28.

7. That sentence was imposed in the wrong court.

We will take up each of these matters in their order.

The first, second and third questions raised by the petition deal with the question of appointing counsel for defendant, even though this was not requested. There was nothing unusual about the proceeding except that the petitioner had been so exceedingly active over a relatively short period that his confinement was obviously necessary for the protection of the law-abiding public. He was not a stranger in the criminal courts. He had previously been there and partially served a term for burglary and forgery.

35 It ought to be settled by this time that lack of counsel in a non-capital case denies federal constitutional protection only when the absence results in the denial to the accused of the essentials of justice: Commonwealth ex rel. Lockoski v. Claudy, 172 Superior Ct. 330; Commonwealth ex rel. Reese v. Claudy, 170 Superior Ct. 488; Commonwealth ex rel. Popovich v. Claudy, 170 Superior Ct. 482; Commonwealth ex rel. Bruce v. Burke, 170 Superior Ct. 642; Commonwealth ex rel. Reggie v. Burke, 170 Superior Ct. 647; and many authorities which might be cited.

The fourth complaint referred to relates to the including of several counts in certain indictments. This does appear, evidently because the defendant burglarized the same place several different times; he committed forgery, forging the name of another person several different times; and the district attorney may have thought that proper. Treating each count in the indictment as a separate indictment, sentences were imposd on each count, many of them running concurrently, and we do not see that the defendant has suffered anx harm by reason of the including of several counts in one indictment.

Even though the relator stood trial and two or more indictments were tried at the same time, this is a matter for the discretion of the court and cannot be raised on habeas corpus: Commonwealth ex rel. Howard v. Claudy, 172 Superior Ct. 574; Commonwealth ex rel. Haines v. Burke, 173 Superior Ct. 477.

36 The defendant's contention that he was detained after his arrest for a period of seventy-two hours during which he was questioned and threatened contradicts the record which was made at that time. In each instance the information shows that on the day the information was made and a warrant issued, the

defendant was brought before the committing magistrate and on his request received a hearing and was committed to the county jail. All of the informations were made on the same day and hearings held on that day. In any event, detention for a reasonable time before the hearing and questioning are not prohibited: Commonwealth ex rel. Roberts v. Keenan, 170 Superior Ct. 282.

If there was any questioning or detention it must have been on September 8th or previous. The petitioner was not called for sentence until October 26, 1945, which is one month and eighteen days after the date of his commitment by the committing magistrate, and while he was in open court where he entered his pleas he does not claim that he was influenced by any threats or undue influence or that he had been subjected to such during one month and eighteen days intervening between his commitment and the time he appeared in court.

The defendant now claims that he was not guilty of any but one of the offenses charged. He seeks now, almost eight years after entering his pleas and being sentenced, to show his innocence and contradict all of the records regarding the crimes in which he admitted he was involved. This is so unreasonable it requires no comment.

37 The defendant claims that sentence was imposed in the wrong court. The indictments regarding burglary which can be tried and punishment imposed only in the Court of Oyer and Terminer, do not show that they were certified to that court. However, the law provides that a judge of the Court of Common Pleas shall sit in the various courts of Quarter Sessions and Oyer and Terminer and General Gaol Delivery, and in the receiving of pleas to indictments all of the requirements of such procedure in a court of Oyer and Terminer were performed. The mere certifying of the records was a formality, and since the court has power to correct its records, the indictment charging burglary might now be certified nunc pro tunc to the Court of Oyer and Terminer, or if it be held that this was not permissible and there must be a certification of the record to the Court of Oyer and Terminer before sentence was imposed even if the same judges presided, then the petitioner has not been properly sentenced and the bills may now be certified to the Court of Oyer and Terminer and the petitioner called for re-sentence. We do not see how the petitioner can claim that he suffered any injustice by reason of the fact that the various bills of indictment on which he waived the action of the grand jury and entered pleas were not first certified to the Court of Oyer and Terminer. All of the sentences are clearly within the limits fixed by the Criminal Code. We, therefore, conclude that there is nothing which requires a hearing: Common-

Wealth ex rel. Haines v. Burke, supra; Commonwealth ex rel.
38 Lockoski v. Claudy, supra; Commonwealth ex rel. Elliott v. Baldi, 373 Pa. 489.

In the Court of Common Pleas of Washington County, Pennsylvania

ORDER DISMISSING PETITION—December 21, 1953

And now, December 21, 1953, the application of Stephen J. Herman for a writ of habeas corpus is hereby dismissed at the cost of the petitioner.

CARL E. GIBSON,
P. J.

39 In the Superior Court of Pennsylvania Sitting at Pittsburgh

[Title omitted]

DOCKET ENTRIES

Appeal from the judgment of the Court of Common Pleas of Washington County at No. 369 May Term, 1953.
January 25, 1954, Appeal and affidavit filed and writ exit, returnable second Monday of April, 1954.
January 28, 1954, Notice of Appeal, filed.
February 25, 1954, Petition in forma pauperis, filed.
February 27, 1954, Record filed.

Order

And Now, February 26, 1954, leave is granted to the appellant to furnish ten clear typewritten copies of the brief, including the opinion of the court below, and to use the original record and notes of testimony at the argument of this appeal, and to serve one clear typewritten copy of the brief, including the opinion of the court below, on opposing counsel in lieu of printing the brief and record as provided by the rules.

By the Court
CHESTER H. RHODES, *P. J.*

April 13, 1954. Argued.

DECISION

August 30, 1954. Order dismissing writ affirmed.

WOODSIDE, *J.*

September 9, 1954. Petition for allowance of appeal to
40 the Supreme Court filed at No. 1980A Miscellaneous Docket.

October 7, 1954. Remitted.

For Appellant:

MARJORIE H. MATSON.

For Appellee:

WRAY G. ZELT,
District Attorney.
JOHN F. RONEY,
Asst. District Attorney.

41 In the Superior Court of Pennsylvania, Pittsburgh District, No. 89 April Term, 1954

No. 288

COMMONWEALTH OF PENNSYLVANIA EX REL., STEPHEN J. HERMAN

v.

DR. JOHN W. CLAUDY, WARDEN OF THE WESTERN PENITENTIARY

Appeal from the Order of the Court of Common Pleas of Washington County, Pennsylvania, at No. 369 May Term, 1953.

OPINION BY WOODSIDE, *J.*—Filed: August 30, 1954

The only question presented to us by the appellant in this appeal from the refusal of the lower court to grant a writ of habeas corpus is "Under the circumstances of this case, did the failure of the Washington County Court to appoint counsel for Defendant deprive him of due process of Law?"

The matter was before the lower court on petition and answer. The court's own record of the sentence and what transpired there was also properly before it, Com. ex rel. Comer v. Claudy, 174 Pa. Superior Ct. 494, 496; 102 A. 2d 227 (1954). Since the lower court dismissed the petition without a hearing, the facts alleged in the petition, if properly and sufficiently averred and unless
42 contradicted by the record itself, must be accepted as true. The conclusions contained in it need not be.

It appears that on October 26, 1945 the relator pleaded guilty before President Judge Gibson in Washington County to 8 offenses of burglary, 12 of larceny, 8 of forgery, and 2 of false pretense, all alleged to have been committed between March 21, 1945 and August 25, 1945. He was sentenced to 2½ years to 5 years on each of the offenses, some to run consecutively, but most concurrently. His total sentence was 17½ years to 35 years in the Western Penitentiary to be computed from September 8, 1945 the day of his arrest.

The law to be applied in this case was set forth by this court in Com. ex rel. Reggie v. Burke, 170 Pa. Superior Ct. 647, 649, 90 A. 2d 585 (1952) as follows:

> "The failure to provide counsel when none is requested or to advise a defendant that counsel will be assigned him upon request does not constitute, ipso facto, a denial of due process or other violation of a defendant's constitutional rights in non-capital cases . . . (Cases cited)
>
> "Both federal and state courts have said that, to invalidate a plea of guilty in non-capital cases by reason of denial of due process arising from failure to provide a prisoner with counsel by the courts of this Commonwealth, the prisoner must establish that for want of benefit of counsel an ingredient of unfairness actively operated in the process that resulted in his confinement. (Cases cited) In the absence of such ingredient of unfairness, the question of waiver of the right to counsel, understandingly made, does not require consideration."

43 See also Com. ex rel. Popovich v. Claudy, 170 Pa. Superior Ct. 482, 87 A. 2d 489 (1952); Com. ex rel. Johnson v. Burke, 174 Pa. Superior Ct. 119, 100 A. 2d 425 (1953).

Whether there is "an ingredient of unfairness" is a determination to be made on the basis of the facts of the individual cases, Uveges v. Pennsylvania, 335 U. S. 437, 69 S. Ct. 184, 93 L. Ed. 127 (1948).

In the recent case of Com. ex rel. Swiderkowski v. Burke, 173 Pa. Superior Ct. 363, 366, 98 A. 2d (1953) this court said:

> "Youth, lack of education, inexperience with the intricacies of criminal procedure, improper conduct on the part of the court or prosecuting officials and the complicated nature of the offense charged may, in some combination, constitute the 'ingredient of unfairness' which renders the absence of counsel at sentencing a denial of due process. Uveges v. Pennsylvania, 335 U. S. 437, 441, 69 S. Ct. 184, 93 L. Ed. 127."

Two years prior to the sentence which is the subject of the present inquiry, the defendant had been charged with burglary, larceny,

and forgery, for which offenses he was sentenced to six to twelve months in the Washington County Jail. After being paroled on this offense he violated his parole by leaving his employment and avoiding the local officials so that his whereabouts were unknown.

Appellant was arrested by the State Police in September, 1945, and held for questioning in connection with a series of burglaries and larcenies. Relator alleges that this questioning extended off and on over a period of 72 hours, during which time he was held incommunicado, part of the time in the Women's Quarters of the County Jail. He also alleges that at one stage of the questioning an officer grabbed him by the neck and threatened to choke him if he did not confess.

44 The Criminal Court records disclose that on September 8, 1945, defendant signed a form entitled "Waiver of Grand Jury and Entry of Plea", by which he agreed to enter a plea to burglary, forgery, and larceny of auto. On the same day defendant was taken before a Justice of the Peace, where he was held for court on 27 separate offenses.

From September 8, 1945 to October 26, 1945, when defendant was brought before the Court for sentence, defendant was held in the Washington County Jail.

Relator now denies his guilt except as to one charge of forgery.

A record was made of the hearing. It shows that as the defendant stood at the bar, without counsel, the assistant district attorney advised the court that defendant had entered a plea of guilty to various indictments and counts which he then referred to in order and described in some detail.

He related the theft of three motor vehicles, a burglary of St. Patrick's Church in Canonsburg, where defendant entered the rear window and stole $20 from the poor boxes; three burglaries of Carmel's Beer Place in Washington, Pa., where on one occasion he was seen, chased and identified, two burglaries of the Washington Theatre and burglaries of restaurants at Frederickstown and West Brownsville. He told how the defendant stole the motor vehicles, referred to above, to get away after committing some of the above crimes and how he stole five checks from one of them; how he forged and cashed one of these checks; and how he forged his wife's name to seven other checks.

45 It was also called to the court's attention that the defendant had been before the court in 1943 on charges of burglary, larceny, and forgery on which he was given six to twelve months in jail. His former and his present residence, and his marital status were given to the court.

He was asked his age. He was asked, "Is there anything you wished to state to the Court about your case?" and replied, "I throw myself at the mercy of the court, your Honor."

The court asked him where he had been working since he was paroled in the former case and, after the court referred to his running away from his work while he was on parole, asked him, "Will you explain to me why the court should extend any leniency to you?" The court asked him whether he had committed numerous burglaries and forgeries and various felonies and he replied, "Yes, sir." The court inquired for the day of commitment, and sentenced with care. The court's discussion of the case with the defendant is recorded over three pages of the printed record. It shows that the defendant was not only given opportunity but was encouraged to say anything to the court which he felt would be helpful to his cause. At no time did the defendant suggest that he desired counsel.

We recite these matters in some detail to show that the court made an effort to get at the facts and to give the defendant an opportunity to say whatever could be said on his behalf.

A careful reading of the record will indicate that there was no unfairness on the part of the court, or the district attorney.

46 The relator was 21 years of age. This, of course, is young, but a large percentage of those who appear in criminal courts are either in their late teens or early twenties. There are probably as many burglaries committed by persons of this boy's age, or younger, as there are by persons older than he."

He had only a grammar school education, but he had been in trouble for larceny, burglary, and forgery before. He had contact with the police, the district attorney, the court, and the probation office prior to his arrest for the offenses in question here. Furthermore, he was in jail first, for a period of some months on the previous sentence, and a second time for about seven weeks before appearing for sentence in these cases. It is not in high school and college that one learns the intricacies of criminal procedure, nor the use of legal technicalities, nor the ways of the officials who are charged with law enforcement. These things are more frequently learned in the jailhouse where there is a concentration of experience on such matters and where there is much time to recall and exchange experiences which have been so important to all present. The relator was not ignorant of the ways of the law and the courts when he was sentenced.

Technicalities, which might have been raised at the time of sentence as to the indictments and as to whether some of the cases should not have been docketed in the Court of Oyer and Terminer rather than Quarter Sessions, are not important to us in this case.

It is not our function to review the term of the sentences imposed by the courts, nor to pass upon their severity or their leniency. The relator got into serious trouble; was paroled; then violated

the trust thus placed in him; then committed a series of
47 various types of serious crimes directed against the church and his family, as well as strangers. For such conduct he should expect that the public, speaking through the sentencing judge, would be likely to express some righteous indignation in the form of a severe sentence. But the prisoner here has now served 9 years, a long time for crimes involving no violence. The Pardon Board has never been asked to examine his case. Whether or not it is because the prisoner fears his prison record or present conduct would not merit consideration, we do not know. If the case is presented to that Board it might find that his record, attitude, and conduct in the penitentiary confirm the sentencing judge's evaluation of him, and that he is not even now a proper person to have his freedom. On the other hand, it might conclude that he has served sufficient time, and is now entitled to another chance.

Under no circumstances should writs of habeas corpus be granted as substitutes for commutation of sentences.

The Constitution of this Commonwealth gives the responsibility in such matters to the Pardon Board, and we have no desire nor right to usurp it.

Order dismissing writ affirmed.

48 In the Supreme Court of Pennsylvania, Western District

[Title omitted]

No. 1980A

PETITION FOR ALLOWANCE OF APPEAL—Filed September 9, 1954

To the Honorable, the Chief Justice and the Associate Judges of Said Court:

The petition of Stephen J. Herman, Appellant by his attorney, Marjorie Hanson Matson, in the above-entitled case, respectfully represents:

First: Your petitioner filed his application for a writ of habeas corpus in the Court of Common Pleas of Washington County, Pennsylvania and a rule issued upon the District Attorney to show cause why the writ should not be granted. An answer was filed and the lower court disposed of the matter on Petition and Answers entering an order dismissing the writ.

Second: An appeal was taken to the Superior Court, which, on August 30, 1954, affirmed the order of the lower court dismissing the writ.

Third: The petition for the writ of habeas corpus and the argument on appeal in the Superior Court raised the basic question of

whether under all the circumstances the taking of an uncounselled plea of guilty to 27 separate charges deprived Petitioner of due process of law.

Fourth: Your Petitioner argued that the facts of his case brought him squarely within the holding of the Superior Court in the case of Com. ex rel. *Swieckowski* v. *Burke*, 173 Pa. Superior Court 363 (1953), in which case it was held that,

> "Youth, lack of education, inexperience with the intricacies of criminal procedure, improper conduct on the part of the court or prosecuting officials and the complicated nature of the offense charged may, in some combination, constitute the 'ingredient of unfairness' which renders the absence of counsel at sentencing a denial of due process."

49 . While the Superior Court impliedly accepted these standards, by citing and quoting from the Swieckowski case, its decision actually repudiated that case. The Court's holding on each of these factors, as applied to the instant case, was as follows:

(a) While conceding that Defendant was only 21 at the time of sentence, the court gave no weight to this fact, pointing out that "a large percentage of those who appear in criminal courts are either in their late teens or early twenties."

(b) Citing that fact that defendant had only a grammar school education, the court dismissed this factor upon the theory that Defendant's one previous jail experience, and his jail confinement for seven weeks prior to sentence, made up for the lack of educational background.

(c) The Court held that defendant's previous criminal experience had familiarized him with the intricacies of criminal procedure, despite the admitted fact that on the former occasion defendant had likewise entered a guilty plea without benefit of counsel, and his express averment that he did not know that he had a right to be represented by court-appointed counsel and was never so advised by any court official.

(d) Appellant averred that the proceedings in his case had been characterized by improper conduct on the part of the court and prosecuting officials in that (1) he was held incommunicado for 72 hours following his arrest, part of the time in the Women's Quarters of the County Jail; (2) he was subjected to "off and on" questioning during this entire period, physically abused and the safety of his wife and child threatened; (3) the so-called "confession" which afforded the basis for the preparation of District Attorney's bills of indictment was the result of the continuous questioning and of the threats and violence, and was, in fact, untrue as to most of the charges; (4) although Defendant had signed a form agreeing to plead to only 3 offenses, on the same day he was held

for court by the Justice of the Peace on 27 separate charges; (5) the court sentenced the Defendant for at least one offense which the statement of the District Attorney indicated had not been committed, and for seven charges of alleged forgery of his wife's
50 name, although the record itself indicated that no third person had been defrauded and that no case against the Defendant could have been made out. Since the court held in its opinion that, absent a hearing in the lower court, the facts properly averred in the Petition must be accepted as true except where contradicted by the Record of the original proceedings, these allegations of improper conduct must be accepted as true. Nonetheless, the Superior Court completely disregarded the improper conduct, even where the record supported the Defendant's allegations, and found no "ingredient of unfairness" present in the case.

(c) The record is clear that the charges against the Defendant were complicated and numerous, and characterized by legal technicalities with which an uncounselled Defendant was unable to cope, yet the Superior Court ignored this factor also.

Sixth: The refusal of the Superior Court to grant relief to your Petitioner had deprived him of his constitutional rights.

Seventh: The instant decision is in conflict with the Superior Court's holding in Com. ex rel. *Swieckowski* v. *Burke*, previously cited, and in view of the constitutional issues involved under both federal and state due process clauses, should be reviewed by your Honorable Court.

Wherefore, your Petitioner respectfully prays that your Honorable Court allow him to appeal from the judgment of the Superior Court in the within case.

(S.) MARJORIE HANSON MATSON
Attorney for Petitioner.

51 CERTIFICATE OF COUNSEL

COMMONWEALTH OF PENNSYLVANIA
County of Allegheny, ss:

Personally appeared before the subscriber, a Notary Public in and for said county and state, MARJORIE HANSON MATSON, who being duly sworn according to law, deposes and says that the facts set forth in the foregoing Petition for Allowance of Appeal are true and correct, and this appeal is not taken for delay but because she believes an injustice has been done to Petitioner.

(S.) MARJORIE HANSON MATSON.

Sworn to and subscribed before me this 9th day of September, 1954.

(S.) LOTTY LOTZ.

51a

ORDER

October 6, 1954, Petition denied.

Per Curiam.

(File endorsement omitted.)

52 IN THE SUPREME COURT OF PENNSYLVANIA WESTERN DISTRICT

[Title omitted]

No. 1980A Miscellaneous Docket

DOCKET ENTRIES

September 9, 1954, Petition of appellant for allowance of an appeal from the judgment of the Superior Court at No. 89 April Term, 1954, filed.

Order

October 6, 1954

Petition denied

Per Curiam.

October 7, 1954, Petition of appellant to retain record pending application to the Supreme Court of the United States for a Writ of Certiorari, filed.

Order

October 8, 1954

Petition granted

Per Curiam.

December 18, 1954, Praecipe for certification of record to Supreme Court of the United States, filed.

For Appellant:

MARJORIE HANSON MATSON.

53-54 Praecipe for Record—Filed December 18, 1954

(Omitted in printing)

55 Judge's and Clerk's Certificates to foregoing transcript omitted in printing.

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56 SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954
No. 399 Misc.

COMMONWEALTH OF PENNSYLVANIA EX REL. STEPHEN J. HERMAN, PETITIONER,

vs.

DR. JOHN W. CLAUDY, WARDEN

On petition for writ of Certiorari to the Supreme Court of the State of Commonwealth of Pennsylvania, Western District.

ORDER ALLOWING CERTIORARI—April 11, 1955

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted and the case is transferred to the appellate docket, as No. 713.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE 1955 55476-2 161